



Ombudsman Report

**Investigation into a complaint about a
meeting held by the Nuclear Waste
Community Liaison Committee for the
Township of Hornepayne on
January 12, 2016**

**Paul Dubé
Ontario Ombudsman
December 2016**

Complaint

- 1 My Office received a complaint that the Township of Hornepayne's Nuclear Waste Community Liaison Committee [the committee] held a meeting without providing public notice on January 12, 2016, contrary to the open meeting rules.
- 2 Under the Act, all meetings of council, local boards, and committees of either of them must be open to the public, unless they fall within prescribed exceptions.

Ombudsman jurisdiction

- 3 As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality has complied with the Act and its procedure by-law in closing a meeting to the public. Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 4 The Ombudsman is the closed meeting investigator for the Township of Hornepayne.
- 5 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipal procedure by-law have been observed.

Investigative process

- 6 We notified the committee and the township that we would be investigating this complaint on October 17, 2016. My Office's Open Meeting Law Enforcement Team reviewed the committee's membership and terms of reference, township by-laws, and information provided by the Nuclear Waste Management Organization. We spoke with the township's Clerk/CAO and the Mayor, who is the co-chairman of the committee. We also spoke with the committee's project manager and its chairman. We obtained and reviewed the meeting materials for the January 12, 2016 meeting.

- 7 My Office received full co-operation in this matter.

Hornepayne Nuclear Waste Community Liaison Committee

- 8 The Township of Hornepayne is one of eight communities in Ontario currently being studied as potential hosts for a deep geologic nuclear waste management facility for used nuclear fuel. The Nuclear Waste Management Organization is leading the consultation and site selection process. Once a community identifies itself as a potential willing host, the Nuclear Waste Management Organization works with the community to educate and consult with residents, including through the establishment of a Community Liaison Committee.
- 9 The Hornepayne Nuclear Waste Community Liaison Committee [the committee] was established in 2011 by the township's council and is governed by terms of reference created by council. The committee's mandate is to promote effective communication between the Nuclear Waste Management Organization, residents, and municipal council with respect to siting a nuclear waste repository.

Terms of reference

- 10 The terms of reference state that the body is a committee and an "agent of the Township". The committee is required to submit regular communication reports to council and provide advice to council on any matter within its mandate.
- 11 The committee consists of 11 members and one non-voting high school representative. Membership is to include the Mayor and one other councillor. Council selects all members and appoints them by resolution. Council's decisions on membership are final.
- 12 The terms of reference establish a Community Liaison Project Manager for the committee, who is an employee of the township. The township's treasurer is also the treasurer for the committee.
- 13 The terms of reference also provide that minutes must be taken at all meetings where there is quorum and forwarded to the Clerk, and that a regular meeting schedule shall be approved by the committee and posted on its website. Special meetings are to be called by the Mayor,

chairperson and/or the administrator (Clerk/CAO). “Special meeting” is defined as a meeting not included on the regular schedule, “for which notice has been provided as soon as prior to the meeting on the NWCLC webpage”. No specific timeframe for notice of a special meeting is set out.

Procedure by-law

- 14 The township’s procedure by-law states that all council and committee meetings shall be open to the public, except in accordance with the exceptions in the *Municipal Act*.
- 15 The by-law closely mirrors the exceptions set out in section 239(2) of the *Municipal Act*, except for the following:
 - a. It refers only to discussions about the “acquisition of real property”, where the Act permits discussion in camera about the acquisition or disposition of land;
 - b. It references a “letter” in respect of which the township has authorized a meeting to be closed under another Act, where ss. 239(2)(g) of the Act refers to discussions about a matter in respect of which a closed meeting may be held under another Act; and
 - c. There is no reference to the exceptions in ss. 239(3.1) for education or training, ss. 239(3)(a) for requests under the *MFIPPA*, or ss. 239(3)(b) for ongoing investigations by my office, a locally-appointed ombudsman, or a locally-appointed closed meeting investigator.
- 16 The township told us that it intends to review and update its procedure by-law in the coming months. As part of that review, the township should ensure that the by-law accurately reflects the open meeting exceptions in the Act.
- 17 The procedure by-law sets out notice requirements for meetings under the heading “Council and Committee Meetings”. However, the specified requirements reference only council meetings. Council meetings are to be held on the first Wednesday of every month at 6:00 p.m., and the time can only be changed if adequate notice is published in local newspapers. The by-law provides for a special meeting to be

summoned by the head of council, with 48 hours' notice except in the case of an emergency.

Meeting on January 12, 2016

Notice

- 18 The committee scheduled a special meeting for 7:00 p.m. on January 12, 2016, in the committee's community office. The project manager told us that this meeting was arranged hastily because a community member had asked to make a delegation to the committee. The project manager was relatively new to the position, having started in October 2015, and she wanted guidance from the committee about how to handle the delegation request, as well as on the committee's terms of reference. The project manager told us that she had not received any training on the open meeting rules prior to the January meeting and did not realize that public notice had to be provided.
- 19 The township's Mayor (who is the co-chairman of the committee) told us the meeting was arranged hastily a few days in advance because the committee had been having difficulty getting a quorum together to approve the meeting minutes from October, and the public had been asking for the minutes. He said that, although he is familiar with the open meeting rules, he did not turn his mind to providing public notice.
- 20 The agenda listed eight items of business, including an update from the project manager, a discussion of recent events and activities in the community, the terms of reference for 2016, a project manager report to the Nuclear Waste Management Organization on community topics, and actions for the next meeting.
- 21 The agenda was not provided to the public and no other public notice was given. The meeting was not listed on the committee's website.

Meeting discussions

- 22 According to the minutes, seven of the 11 members of the committee were present, including the chairman and co-chairman. The project manager was at the meeting and took minutes.
- 23 The meeting was called to order at 7:06 p.m.

- 24 According to the minutes, the committee discussed several items of business, including approving previous meeting minutes, an update about a resignation, and an update about a local mill closure. Certain items from the agenda, including an update from the administrator and a discussion about recent community events, were deferred.
- 25 The committee discussed its terms of reference and identified changes it would like made to the document. It talked about the project manager's report to the Nuclear Waste Management Organization about community events. It also discussed a delegation request and how best to respond to it.
- 26 The meeting adjourned at 8:16 p.m.

Analysis

- 27 Section 238(2.1) of the *Municipal Act* requires that every municipality pass a procedure by-law that "shall provide for public notice of meetings". The Act defines "meetings" as any regular, special, or other meeting of a council, local board, or a committee of either of them.
- 28 Section 238 of the Act defines "committee" as any advisory or other committee, sub-committee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards. A body can also be a committee of council if it is established as a committee by by-law.¹
- 29 The township's procedure by-law states that it applies to council and its committees. The Clerk told us that the township considers the Nuclear Waste Community Liaison Committee to be a committee of council and subject to the township's procedure by-law.
- 30 A representative of the Nuclear Waste Management Organization told our office the Community Liaison Committees are set up as committees of the local municipal council, and the organization believes the committees are subject to all municipal by-laws. It is the Nuclear Waste Management Organization's understanding that all community liaison committee meetings are open to the public.

¹ See e.g. Local Authority Services, *Report to the Council of the Town of Whitchurch-Stouffville* (August 2011), online: <http://www.agavel.com/wp-content/uploads/2013/09/Whitchurch_Stouffville_Report_2011.docx>.

- 31** The Hornepayne Nuclear Waste Community Liaison Committee is a committee of council subject to the open meeting rules.
- 32** The committee's terms of reference require notice of a special committee meeting to be provided prior to the meeting on the committee's website. While the township's procedure by-law and the committee's terms of reference fail to set a clear time frame for public notice of special meetings, it is clear that some advanced public notice is required.
- 33** In practice, the public does not have the opportunity to attend and observe a meeting if no notice about the time and location of the meeting is provided in advance. In such circumstances, the meeting is effectively closed to the public contrary to the open meeting requirements.²
- 34** The January 12 meeting was effectively a closed meeting, since no members of the public had the opportunity to attend. The committee violated its own terms of reference, the township's procedure by-law, and the Act by failing to provide public notice of the meeting.
- 35** The committee chairman, and all other members aside from the Mayor and one councillor, are volunteers from the community. The project manager was new to the position at the time of the January meeting. None of the volunteers or the project manager were provided with any training with respect to the open meeting rules or their obligations under the Act prior to the January 12 meeting. In discussions with our office, the Mayor and Clerk indicated that the Nuclear Waste Management Organization plans to provide training on the open meeting rules for the committee in the near future. The township will also provide training to committee members on its procedure by-law once that by-law is updated by council.

² See e.g. Ombudsman of Ontario, *Investigation into whether Council for the Municipality of Magnetawan held illegal closed meetings on February 28 and March 4, 2015* (June 2015), online: <[https://www.ombudsman.on.ca/Resources/Reports/Municipality-of-Magnetawan-\(1\).aspx](https://www.ombudsman.on.ca/Resources/Reports/Municipality-of-Magnetawan-(1).aspx)>.

Opinion

- 36 The Township of Hornepayne's Nuclear Waste Community Liaison Committee is a committee of council subject to the *Municipal Act's* open meeting requirements. The committee contravened the Act and the township's procedure by-law on January 12, 2016, when it held a meeting without providing any notice to the public.

Recommendations

- 37 I am making the following recommendations to assist the Hornepayne Nuclear Waste Community Liaison Committee and the Township of Hornepayne to adhere to the open meeting requirements of the Act and to improve the procedures and practices related to meetings of the committee.

Recommendation 1

All members of the Hornepayne Nuclear Waste Community Liaison Committee should be vigilant in adhering to their individual and collective obligations to comply with the committee's responsibilities under the *Municipal Act, 2001*.

Recommendation 2

The Hornepayne Nuclear Waste Community Liaison Committee should ensure that public notice is provided for all meetings in accordance with the township's procedure by-law and the committee's terms of reference.

Recommendation 3

The Township of Hornepayne should ensure that all members of its committees receive training with respect to the open meeting rules.

Recommendation 4

The Township of Hornepayne should amend its procedure by-law to accurately reflect all the closed meeting exceptions in the *Municipal Act, 2001*.

Report

- 38 The Hornepayne Nuclear Waste Community Liaison Committee and council for the Township of Hornepayne were given the opportunity to review a preliminary version of this report and provide comments.
- 39 The Clerk / CAO told us that the township and the committee are taking appropriate action to address the recommendations. Training will be provided to the committee once the township adopts a revised procedure by-law in the new year.
- 40 My report should be shared with council for the Township of Hornepayne. The report should be made available to the public as soon as possible, and no later than the next council meeting.



Paul Dubé
Ontario Ombudsman